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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,106	12/27/2000	Cary Lee Bates	ROC920000234US1	6268
7590 03/21/2005			EXAMINER	
Gero G. McClellan Thomason, Moser & Patterson, L.L.P. 3040 Post Oak Boulevard Suite 1500 Houston, TX 77056-6582			CHUNG, JASON J	
			ART UNIT	PAPER NUMBER
			2611	
DATE MAILED: 03/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/749,106

Applicant(s)

BATES ET AL.

Examiner

Jason J. Chung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Arguments***

Applicant's arguments filed 10/18/2004 have been fully considered but they are not persuasive. The applicant argues on pages 7-8 of the response by stating the rejection is invalid because the examiner misinterprets Pallakoff. The examiner respectfully disagrees with this assertion.

On page 7, the applicant states, "Pallakoff does not disclose a pricing model that is contingent on the number of members in a subscriber group who purchase a given program." The applicant further cites one seller and one buyer are necessary (Pallakoff: column 2, lines 58-60). While it is true that only one buyer and one seller are capable, the reference explicitly teaches the use of multiple buyers (column 2, lines 58-60) belonging to a group (column 5, lines 7-15). For instance, the reference does not preclude a scenario where each member of the subscriber group is purchasing only one ball each. Thus, there is a certain threshold of subscribers that must buy the respective balls to meet thresholds for the purpose of lowering prices (Pallakoff: column 4, lines 20-41).

The applicant argues on pages 8-9 of the response that the dependent claims are allowable since the independent claim is also allowable. The examiner respectfully disagrees with this assertion and maintains the rejection of all the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 4-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (US Patent # 6,016,141) in view of Pallakoff (US Patent # 6,269,343).

Regarding claim 1, Knudson discloses receiving, via a network connection 30 (figure 1; column 3, lines 54-58), a purchase order for a program from a subscriber a subscriber group (figure 6; column 6, line 52-column 7, line 4).

Although Knudson discloses providing discounts based upon the quality of programming purchased by a viewer, Knudson fails to disclose determining first and second prices.

In analogous art, Pallakoff discloses determining a first price for a purchase order if goods are purchased by a threshold number of subscribers belonging to a subscriber group and determining a second price, higher than the first, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group for the benefit of providing discounts (column 1, lines 40-49) to members of a group based upon the quantity purchased (figure 3; column 4, lines 20-33 [disclosing price structure wherein price levels decreasing in relation to demand threshold levels of amount]; figure 6, column 7, line 6-column 8, line 40 [description of price determination based on aggregate demand of members]).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the programming price determination of Knudson to incorporate determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to a subscriber group and determining a second price, higher than the first price if the program has not been purchased by the threshold number of subscribers

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belonging to the subscriber group as taught by Pallakoff in order to provide discounts to members.

Regarding claim 2, Pallakoff discloses determining the first and second prices comprises executing a pricing program (figure 6; column 7, line 6-column 8, line 53).

Regarding claim 4, Pallakoff discloses the threshold number of subscribers (buyers' = more than one) is greater than one and is some portion of all the subscribers in the group (column 4, lines 53-57).

Regarding claim 5, the teachings of Knudson in view of Pallakoff are relied upon as discussed relative to claim 1 rejection. Claim 5 recites a limitation, which is not critical to the invention and describes typical, widely employed business practices. The examiner takes Official Notice that profits on the sale of goods or services to a group of buyers are maximized as the number of purchasers increases (i.e. profits increase with rising quantity sold) is notoriously well known in the art. For instance, a commercial carrier (i.e. airplane or bus) realizes maximum profits when all the available seats are sold. Moreover, the establishment of the threshold level equal to all members of a group merely serves to encourage this increase in profits by ensuring that the maximum profit will be realized by obtaining a purchase from each group member.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pricing determination method of Knudson in view of Pallakoff to incorporate the threshold number as all the subscribers of the subscriber group in order to increase revenue by maximizing the quantity of goods sold and ensuring a minimum expected return from consumer purchases.

Regarding claim 6, Knudson discloses providing, via a network communication, at least one of the first price and second price to the subscriber prior to the subscriber purchasing the program (figure 8; column 7, lines 31-49).

Regarding claim 7, Knudson discloses the purchase order indicates an intent of the subscriber to view the program at a future time (figure 2; column 4, lines 23-47, wherein user purchase of pay per view event to occur at a known time in the future inherently discloses intent to view the program at a future time).

Regarding claim 9, Knudson discloses receiving, prior to receiving the purchase order, an electronic message indicating an intent of the subscriber to purchase the program (figure 6, wherein the user selection of program for purchase 84 is received prior to the reception of confirmation of purchase (e.g. purchase order) (step 112 or 96); column 6, lines 42-51).

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Pallakoff in further view of Jeffers (US Patent # 5,036,537).

Regarding claim 3, neither Knudson nor Pallakoff discloses sending an invoice.

In analogous art, Jeffers discloses preparing and sending an invoice to subscribers (column 6, lines 24-49). Sending invoices to subscribers of a cable system provides the notoriously well-known benefit of informing subscribers of amounts owed to a programming provider. It would have been obvious to one of ordinary skill in the art the time the invention was made to modify the price determination of Knudson in view of Pallakoff to incorporate preparing and sending an invoice to the subscriber for the program as taught by Jeffers for the benefit of informing subscribers of amounts owed to a programming provider.

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3. Claims 8, 10, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Pallakoff in further view of Cooper (US Patent # 6,754,904).

Regarding claim 8, neither Knudson nor Pallakoff discloses notifying at least one other subscriber in the subscriber group of the purchase order. In analogous art, Cooper discloses notifying other viewers in a viewing group (e.g. buddy list) of viewer messages (figure 9; column 6, lines 18-39). Although the messaging disclosed by Cooper is missing the specific notification of the purchase order in the message, the chat feature among group members taught by Cooper is capable of notifying other viewers of any message, which necessarily includes a programming purchase order.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the price determination of Knudson in view of Pallakoff to incorporate notifying at least one other subscriber in the subscriber group of any type of message (i.e. what type of movie a user prefers, what channel a user is watching, and notification of a purchase order) as taught by Cooper for the advantage of providing messages desired by members in a group.

Regarding claim 10, the limitations in claim 10 have been met in claim 8 rejection.

Regarding claim 13, neither Knudson nor Pallakoff discloses processing a request to initiate a network dialog session.

In analogous art, Cooper discloses processing a request to initiate a text chat session (i.e. network dialog session) with at least one other subscriber in a subscriber group (i.e. buddy list) (figures 6 and 9, column 4, lines 28-33; column 6, lines 18-57) for the benefit of allowing members of a group to discuss programming content in real time (column 6, lines 34-36).

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Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the program pricing system of Knudson in view of Pallakoff to incorporate processing a request to initiate a network dialog session with at least one other subscriber in the subscriber group as taught by Cooper for the benefit of allowing members of a group to discuss television programming content in real time in a method for determining a price of a program.

Regarding claim 14, Cooper discloses handling messages sent between subscribers participating in network dialog sessions (column 6, lines 18-57).

4. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Pallakoff in further view of LaRocca (US Patent # 6,314,572).

Regarding claim 11, neither Knudson nor Pallakoff discloses a determination of whether a subscriber belongs to the subscriber group.

In analogous art, LaRocca discloses the determination of whether a subscriber belongs to a subscriber group (e.g. customers that meet particular service level or type criteria) prior to the determination of price (figure 3B, column 10, line 54-column 11, line 43; column 5, lines 29-41) for the benefit of providing access to programming based upon types of service a user subscribes to (column 3, lines 30-61). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the price determination of Knudson in view of Pallakoff to incorporate determining whether the subscriber belongs to the subscriber group prior to determining the price as taught by LaRocca for the benefit of providing access to programming based upon types of service a user subscribes to in a method for determining the price of a program.



Regarding claim 12, LaRocca discloses the step of determining whether the subscriber belongs to the subscriber group comprises accessing a database (figure 1, network manager database 154; column 5, lines 29-41).

5. Claims 15-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Pallakoff in further view of Callais (US Patent # 3,790,700).

Regarding claim 15, the limitations in claim 15 have been met in claim 1 rejection. Knudson and Pallakoff, are silent as to a database containing subscriber groups each including at least two subscribers. In analogous art, Callais discloses a database (e.g. memory of computer 17) containing subscriber groups (e.g. restricted lists) each including at least two subscribers (column 5, line 49-column 6, line 16) for the benefit of organizing subscribers according to common interests in providing requested programming (column 5, lines 61-64).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knudson in view of Pallakoff to have a database containing subscriber groups each including at least two subscribers as taught by Callais for the benefit of organizing subscribers according to common interests in providing requested programming.

Regarding claim 16, Knudson discloses the programming provider is a cable provider (column 3, lines 3-8).

Regarding claim 17, Knudson discloses the programming provider is connected to the plurality of subscribers by a network connection (figure 1; column 3, lines 3-8).

Regarding claim 18, Knudson discloses the programs are pay per view programs (column 3, lines 37-39).

Regarding claim 19, Knudson discloses the programs are movies (column 5, lines 53-55).

Regarding claim 20, Knudson discloses the programs are entertainment events (column 6, lines 4-13).

Regarding claim 21, Knudson discloses the programs are transmitted at a predetermined time (e.g. starting time of pay per view event) (column 7, lines 41-45).

Regarding claim 22, the limitations in claim 22 have been met in claim 15 rejection. Knudson discloses the additional limitation of a plurality of signal processing units each associated with one of a plurality of subscribers (figure 1, user equipment 32; column 3, lines 31-35); and a programming provider system connected to the signal processing units (column 3, lines 45-65; figure 1).

Regarding claim 23, the limitations in claim 23 have been met in claims 1, 15 rejections.

Regarding claim 24, Callais discloses a database (memory in computer 17) accessible by the programming provider system (headend 13) and containing a subscriber identifier (e.g. subscriber terminal address) for each of the plurality of subscribers and a subscriber group identifier (e.g. doctors, lawyers, law enforcement, etc.) for each subscriber group (figure 1; column 5, line 49-column 6, line 16).

Regarding claim 25, Knudson discloses the plurality of signal processing units are configured to communicate messages via a communication network (column 3, lines 54-62; figure 1).

Regarding claim 26, Knudson discloses the programming provider is a cable provider (column 3, lines 3-8).

Regarding claim 27, Knudson discloses the programming provider is connected to the plurality of subscribers by a network connection (figure 1; column 3, lines 3-8).

Regarding claim 28, Knudson discloses the programs are pay per view programs (column 3, lines 37-39).

Regarding claim 29, Knudson discloses the programs are movies (column 5, lines 53-55).

Regarding claim 30, Knudson in view of Pallakoff in further view of Callais discloses the invention as claimed. Particularly, Pallakoff discloses if more than a threshold number of subscribers purchase the same item (Pallakoff: column 4, lines 20-41) the programming provider is further configured to transmit electronic offer notifications to those subscribers belonging to the common subscriber group (Callais: common group) who have not yet purchased the same item, the electronic offer notifications indicating that the same item may be purchased for a reduced fee (Pallakoff: column 6, lines 51-66; "We need to sell 12 more units to get the best discount price!") as a result of the threshold number of subscribers purchasing the same program.

Regarding claim 31, the limitations in claim 31 have been met in claim 30 rejection.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Chung whose telephone number is (703) 305-7362. The examiner can normally be reached on M-F, 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JJC

  
HAT TRAN  
PRIMARY EXAMINER